

R E M A R K S

I. Introduction

Claims 1-92 are pending in the application. All pending claims stand rejected. In particular, (1) claims 1-37 and 72-83 stand rejected under 35 U.S.C. §101 as being allegedly directed to non-statutory subject matter, and (2) claims 1-92 stand rejected under 35 U.S.C. §103(a), as being unpatentable over U.S. Patent No. 5,797,126 (hereinafter "Hebling"), in view of "Tips for the Road" (hereinafter "Tips").

Upon entry of this amendment, which is respectfully requested, claims 37, 64, and 68 will be cancelled without prejudice or disclaimer, and independent claims 1, 2, 27, 38, 39, 56, 65-67, 69-72, and 83, as well as dependent claims 5-8, 12, 26, 32-35, 42-45, 55, 60-62, 74-75, and 85, will be amended to more distinctly claim current embodiments. No new matter is believed added by this amendment. Support for all amendments exists in the specification and claims as originally filed, and all such matter has previously been searched by the Examiner.

Applicants respectfully request reconsideration and further examination of the pending claims in view of the arguments presented herein and in accordance with 37 CFR §§1.113, 1.116.

Applicants respectfully note that the present amendment places the currently presented claims in form for allowance or in better form for appeal.

A. Summary of Claimed Embodiments

According to some embodiments, "an airline reservation system...supports guaranteed reservations for a preferred category of seating." (Pg. 4, lines 21-22). Such a system may, according to some embodiments, "reassign passengers to different seats within their guaranteed category of seating *in order to satisfy a subsequent passenger's request*." (Pg. 5, line 22 to Pg. 6, line 2, emphasis added). In typical airline reservation systems, "[o]nly when a passenger's reservation is cancelled and the seat selection becomes available can a confirmed passenger or a new passenger be assigned to the vacant seat". (Pg. 4, lines 13-15).

Some embodiments may therefore, for example, allow more passenger seating category requests to be fulfilled (than is possible in typical systems) by allowing passengers to be flexibly reassigned to increase subsequent passenger request fulfillment.

B. Summary of the Cited References

1. Hebling

Hebling generally describes "a method of and an apparatus for the sale or dispensing of tickets to particular events with reserved or assigned seating in connection with the display of segments of these productions or events, background information about the productions or events, display of actual stage or field views from seat locations prospectively selected for purchase." (Col. 1, lines 21-31).

That is, Hebling is seen as describing a reservation system that allows consumers to take a virtual tour of a venue prior to reserving a seat in the venue. Actual views from seats may, for example, be provided to consumers prior to the purchase of a ticket for the seat.

2. Tips

Tips describes the practice of bumping an airline passenger's seat if the passenger has not checked in within a certain amount of time prior to departure. More particularly, Tips relates that United Airlines® instituted a policy of releasing a reserved seat and potentially reassigning the seat if the passenger has not checked in within twenty to forty-five minutes of departure (depending on the destination).

II. The Examiner's Rejections

A. Rejection Under 35 U.S.C. §101

Claims 1-37 and 72-83 stand rejected under §101 as being allegedly directed to non-statutory subject matter. Claim 37 is cancelled by this amendment. Applicants have amended independent claims 1, 2, 27, 72, and 83, as suggested by the Examiner. In particular, each of the claimed methods now includes at least one claim element described as being performed by a computer. Applicants therefore respectfully request that the §101 rejection of claims 1-36 and 72-83 be withdrawn. These amendments have been provided solely to advance prosecution of this case.

B. Rejection Under 35 U.S.C. §103(a)

All pending claims stand rejected under §103(a) as being unpatentable over Hebling in view of Tips. Applicants respectfully traverse this ground for rejection as follows.

1. The references fail to teach or suggest *reassigning the first passenger to a different “flexible” seat assignment within the guaranteed category of seating on the flight based on a request associated with a second passenger*

Applicants respectfully assert that neither Hebling nor Tips, either alone or in combination, teaches or suggests embodiments as recited in claims 1-36, 38-63, 65-67, and 69-92. In particular, Hebling and Tips fail to teach or suggest *reassigning the first passenger to a different “flexible” seat assignment within the guaranteed category of seating on the flight based on a request associated with a second passenger*. (a limitation generally included in each of claims 1-36, 38-63, 65-67, and 69-92).

Applicants have clarified the claim language to point out that the first passenger may be reassigned based on a request associated with a second passenger. In other words, the first passenger may be reassigned to accommodate the request of the second passenger. The reassigning may occur, for example, for a particular airline flight (and/or other seating at a particular venue). Although Applicants maintain that reassigning a passenger based upon a subsequent request (*e.g.*, even if originating from the same passenger) is not taught or suggested by either cited reference, the amended claim language further distances the claimed embodiments from the cited references.

For example, even if the Examiner's interpretation of the cited references and/or the various Official Notice recitations is correct (which Applicants contend is not the case), the teachings recited by the Examiner fail to describe currently claimed embodiments as amended.

Neither Hebling nor Tips, for example, teach or suggest reassigning a *first passenger* based on a request associated with a *second passenger*. Indeed, neither cited reference mentions *first and second passengers*. Neither reference contemplates altering a first passenger's seat assignment based on a request of a second passenger, much less doing so for a particular airline flight (and/or other particular venue).

Accordingly, Applicants respectfully assert that both Hebling and Tips fail to anticipate (or render obvious) embodiments as recited in claims 1-36, 38-63, 65-67, and 69-92, at least

because Hebling and Tips fail to teach or suggest *reassigning the first passenger to a different "flexible" seat assignment within the guaranteed category of seating on the flight based on a request associated with a second passenger.*

Applicants therefore respectfully request that the §103(a) rejections of claims 1-36, 38-63, 65-67, and 69-92 be withdrawn.

2. The Examiner has failed to establish a *prima facie* case for obviousness

Even if Hebling and Tips taught or suggested the limitations of the claimed embodiments (which Applicants assert that they do not), the §103(a) rejection of the pending claims would still be inappropriate because a *prima facie* case for obviousness has not been established. The Examiner's statement that it would have been obvious to modify the prior art to "incorporate into the disclosure of Hebling the teachings of Tips" because it would "allow the airlines to shuffle the seating to maximize and provide appropriate seating to as many passengers as possible" is not sufficient to meet the Examiner's burden of providing a *prima facie* case of obviousness.

Applicants therefore respectfully request that the §103(a) rejections of claims 1-92 be withdrawn.

Further, the Examiner's reliance upon Official Notice as the motivation to combine the cited references is not supported by any evidence on the record. The Examiner has not, for example, pointed to a specific teaching in either reference or the Official Notice that would motivated one skilled in the art to combine the alleged teachings.

Applicants request that all materials and references provided by the Examiner that are not part of a specific reference in the art be properly entered into the record in accordance with the rules regarding Official Notice. (See, MPEP §2144.03). Applicants respectfully traverse the Examiner's attempt to rely upon "common knowledge" without properly taking Official Notice. Applicants respectfully note that the MPEP requires that "the examiner must provide documentary evidence in the next Office Action if the rejection is to be maintained". (*Id.*).

Further, "the deficiencies of the cited references cannot be remedied by the [Examiner's] general conclusions about what is 'basic knowledge' or 'common sense' to one of ordinary skill in the art." *In re Zurko*, 258 F.3d 1379, 59 U.S.P.Q.2d (BNA) 1693 (Fed. Cir. 2001), at 1385.

The MPEP requires that an Examiner provide support for such assertions "[i]f the examiner is relying on personal knowledge to support the finding of what is known in the art, the

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examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding". (MPEP §2144.03)).

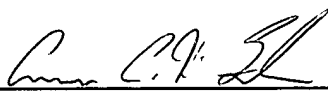
Applicants request that the Examiner provide an affidavit if the Examiner persists in the present rejections. Further, the support provided by the Examiner "shall be as specific as possible". (37 C.F.R. §1.104(d)(2)).

III. Conclusion

Accordingly, Applicants respectfully assert that each of the pending claims is patentable over the cited references. Applicants therefore respectfully request that all pending claims be allowed. Applicants' silence with respect to other comments made in the Office Action does not imply agreement with those comments. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at 203-972-4982.

Respectfully submitted,

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Date



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